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DECISION.



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE:

B-194229

DATE: September 20, 1979

MATTER OF:

Bloomsbury West, Inc.

*[Protest Alleging]*  
DIGEST:

Complaint that executive agency was required to conduct procurement instead of awarding grant is denied since award of other than procurement contract was consistent with Federal Grant and Cooperative Agreement Act of 1977.

*DLG 02809*  
*DLG 02810*  
*DLG 02811*  
*DLG 02812*  
Bloomsbury West, Inc. (Bloomsbury) protests the decision of the Department of Health, Education and Welfare's Office of Education (OE) to award an "assistance contract" to the Bay Area Bilingual Education League, Inc. (BABEL) to operate the Northern California National Origin Desegregation Assistance Center (NODAC) under the Civil Rights Technical Assistance and Training Program.

Bloomsbury contends that OE improperly departed from its previous practice of conducting competitive negotiated procurements for the Northern California NODAC, used an improper solicitation, evaluated competing proposals improperly, and made an award to an applicant of questionable responsibility. Bloomsbury asks us to set aside the award to BABEL and to direct OE to conduct a procurement competition because "[i]n the absence of express statutory authority, procurement must be by contract, not by grant."

This Office generally does not consider complaints concerning the propriety of grant awards. Washington State Department of Transportation, B-193600, January 16, 1979, 79-1 CPD 25; 40 Fed. Reg. 42406 (1975). However,

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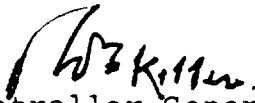
since OE previously conducted procurements for this program and Bloomsbury alleges that OE was required here to conduct a procurement subject to the competitive procurement statutes and the Federal Procurement Regulations (FPR), we will consider the propriety of OE's failure to utilize procurement procedures. See Burgos Associates, Inc., B-194140, September 13, 1979, 58 Comp. Gen. \_\_\_, 79-2 CPD \_\_\_.

We find OE properly did not conduct a procurement here. Under the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95-224, February 3, 1978, 92 Stat. 3, 41 U.S.C.A. §§ 501 et seq. (West Supp. 1978), Federal executive agencies must distinguish among "contracts," "grants," and "cooperative agreements" when making awards. A procurement contract is to be used whenever the principal purpose of the relationship between the agency and its awardee is the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government, while a grant is to be used when the relationship established is for the transfer of money, property, services, or anything of value to the recipient to accomplish a public purpose of support or stimulation, and the Federal role is passive or no substantial agency involvement is anticipated. If the Federal role is active or substantial agency involvement is anticipated, the agency must enter into a cooperative agreement.

Under the NODAC program, OE funds certain public agencies or private, nonprofit organizations which are equipped to provide technical assistance to public school personnel, students enrolled in public schools and their parents, and other community members in the preparation, adoption, and implementation of national origin desegregation. We think it is reasonable to conclude that the principal purpose of the relationship between OE and an award recipient is the transfer of money to accomplish a public purpose of support authorized by Federal statute, so that a grant or cooperative agreement, rather than a procurement contract, is appropriate for use.

Moreover, although Bloomsbury also alleges that OE is without statutory authority to utilize a grant document for this program, the Act authorizes each agency previously authorized by law only to enter into contracts, grants, or cooperative agreements to enter into all three relationships subject to the above criteria unless otherwise prohibited by a separate statutory restriction. While we are not convinced that OE previously had only procurement authority--the enabling statute, 42 U.S.C. § 2000c-2 (1976), authorizes the Commissioner of Education to "render technical assistance" to governmental units legally responsible for operating public schools "in the preparation, adoption, and implementation for desegregation of public schools"--it is clear that under the 1978 law OE may now award grants as well as contracts for the NODAC program.

We note that, while under the Act, it was inappropriate for OE to term the award an "assistance contract," OE concedes the point and states that in the future it will award grants or cooperative agreements. We further note that the award was made during the one year grace period provided by the Act for agency compliance, see 41 U.S.C.A. § 509(b) (West. Supp. 1978), so that this technical noncompliance provides no basis for viewing the award as illegal.

  
Acting Comptroller General  
of the United States